

United States District Court  
Northern District of New York

03-CV-1075

#1

Civil Case No:

Robert Jaegly Jr.

Plaintiff

vs.

Matthew Couch  
Bernard Santandria  
Paula Breen  
The City of Albany

Defendants

U.S. DISTRICT COURT  
N.D. OF N.Y.

FILED

AUG 29 2003

#150 Pd

LAWRENCE K. BAERMAN, CLERK  
ALBANY

Civil Rights  
Complaint

DNH / RFT

Pursuant to  
42 USC 1983

and  
Laws of New York

Summons Iss'd.  
(WL)

The plaintiff in the above-captioned action alleges as follows:

#### I. JURISDICTION

1. This is an action for money damages pursuant to both 42 USC 1983 and the laws of the State of New York. Jurisdiction is both by virtue of diversity and the subject matter of 42 USC 1983.

#### II. PARTIES

2. Plaintiff: Robert Jaegly Jr.

Box 44004

Fort Washington MD 20749

Plaintiff is a resident of the State of Maryland.

3. Defendant: Matthew Couch

employee of the City of Albany

Albany NY 12207

4. Defendant: Bernard Santandria

former employee of the City of Albany



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5. Defendant: Paula Breen  
employee of the City of Albany  
Albany NY 12207
6. Defendant: The City of Albany  
a municipality of the State of New York  
Albany NY 12207

### III. FACTS

7. During the week of Dec. 3, 2001, plaintiff Robert Jaegly discovered pasted in the window of a pickup truck parked across from his residence at the time, copies of an Order of Protection issued by City Court of Albany on Nov. 20, 2001 in favor of Philip Zeller. The order commanded plaintiff to stay away from the home, business, etc, of Mr. Zeller but did not specify any location or address of Mr. Zeller. Mr. Zeller, under threat of eviction, had moved from the house at 418 Elk St. where plaintiff was a guest in great secrecy and without telling the owner or plaintiff his new address.

8. The Order of Protection had been issued as the result of a summons charging Harassment 2nd Degree- threatening "to pound"

Mr. Zeller- received not coincidentally the day Mr. Zeller moved from 418 Elk St. The order and ACOD disposition had been agreed to only under duress, and because the Court stated that any other disposition would not be considered promptly and would require plaintiff's continued presence in Albany.

9. Before Nov. 20 plaintiff had experienced intimidation and threats of violence personally from Mr. Zeller; between Nov. 20 and Dec. 3, plaintiff experienced various acts of harassment involving notes, garbage, etc which plaintiff attributed to Mr. Zeller.

10. About 3:30PM on Dec. 5, 2001, Albany Police Officer Matthew Couch arrested plaintiff after saying "you're going to spend the night in jail" and personally booked, processed, and confined plaintiff against his will at the Albany Police lockup. Officer Couch used deliberation in processing plaintiff, during which several other prisoners were completely processed.

11. On Dec. 6, 2001 plaintiff was given a copy of a felony complaint signed by Couch, and charged with Criminal Contempt First Degree, penal section 215.51-B5, before Judge John Egan. Plaintiff was also given a copy of an Oral Statement Report, APD #01-437969, signed by Matthew Couch, stating that on Dec. 5, 2001 at 3:20PM Robert Jaegly had made the statement "No, I only took pictures of his car". Plaintiff was released on bond posted at

City Court after being transported to Albany County Jail for no purpose.

12. At a preliminary hearing on Dec. 11, 2001, the felony charge of Criminal Contempt First Degree was withdrawn. Plaintiff was then given a Prosecutor's Information dated Dec. 13, 2001 and signed by Mary Tanner Richter charging plaintiff with Criminal Contempt in the Second Degree, penal section 215.50(3).

13. Penal section 215.51-B5 requires for a person to be guilty that he, "with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, strikes, shoves, kicks or otherwise subjects such other person to physical contact or attempts or threatens to do the same".

14. The felony complaint dated Dec. 5, 2001 states: "The sources of the deponent's information and the grounds for his belief are oral statements made to deponent by defendant that he committed the foregoing acts at the time, place and in the manner above set forth; and/or from information obtained from witnesses whose depositions are attached hereto and made a part hereof". The Oral Statement report signed by Matthew Couch did not give a statement to the effect that Robert Jaegly subjected anyone to physical contact or threatened to do so, nor did any other deposition or statement.

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15. In the trial held Aug. 29, 2002 on the charge of Criminal Contempt Second Degree, Officer Couch did not testify that Robert Jaegly or any one else told him that Robert Jaegly had on Dec. 5, 2001 subjected Philip Zeller to physical contact or threatened to do so.

16. Penal section 215.50(3) requires for a person to be guilty that he intentionally disobey or resist the lawful process or other mandate of a court.

17. The Prosecutor's Information dated Dec. 13, 2001 stated that "while in front of 411 Elk St." the defendant "did intentionally take several photographs of [Philip Zeller's] home and car". It was not disputed in later proceedings that "in front of 411 Elk St." was the public street, on the only side permitted for parking, also across from plaintiff's residence at 418 Elk St. and the same distance from 411 Elk St. as plaintiff had been every day since the order was issued on Nov. 20.

18. The Prosecutor's Information dated Dec. 13, 2001 does not allege any fact, or any belief, that plaintiff intended, by taking photographs of the Order of Protection being used to harass and annoy him in public, to violate said order.

19. In October Mr. Zeller had provided a letter dated Oct. 3, 2001, "to verify that Philip Zeller Jr. ... has now achieved the

acceptance needed to proceed with his relocation", purportedly from the Albany County Department of Social Services. After plaintiff discovered that he was to be charged in City Court with "threatening to pound on" Mr. Zeller, he took that letter to James Green at that Department and learned that the stationery of the letter had been superceded and should not have been used in October of 2001, and that the letter appeared to him to be a forgery. Other officials determined that the terminology in the letter was incorrect and the purported author was no one who was associated with Mr. Zeller's case.

20. After notarizing affidavits from Joseph Norton that he had received the letter and had relied and been deceived by it, and by the plaintiff that he had determined from named officials that the letter had been falsely made, three unsuccessful attempts were made to bring charges of Forgery 3rd Degree against Mr. Zeller at the North Station of the Albany Police Department.

21. On the third attempt, Jan. 4, 2002, Sergeant Nadoraski told Mr. Norton and the plaintiff in this action, Mr. Jaegly, that they must go to the District Attorney's Office to file any complaint because of the current prosecution against Mr. Jaegly.

22. On November 21, 2001, after appearing without adequate notice in City Court the previous day, Janice Cellucci, the Chief Clerk, was asked why a summons dated Oct. 31, 2001, was not





delivered until 3 business days before the scheduled hearing. She stated that according to their records it had been properly mailed and that it should have been received at least 2 weeks before the hearing date. She was shown the envelope that the summons was received in, which had the date printed by Neopost meter serial number 4181751 completely obscured, and became physically startled. She then said that such an envelope could have been issued by their machine by error, but that the operator would have redone it if the error had been noticed.

23. On Dec. 10, 2001, a statement by Joseph Norton was notarized, in which he describes the receipt of the letter (containing the summons) from City Court, and that Philip Zeller had access to Mr. Norton's mailbox and that Philip Zeller had admitted stealing Mr. Norton's mail on other occasions.

24. On Jan. 10, 2002, photographs of the envelope thru filters while excited with ultraviolet light established that the substance which obscured the postage meter date was different than (fluorescent) postage meter ink, and that the date under the obscuring substance could be clearly seen to be "OCT 31 '01". The exact same procedure, applied to a control unobscured meter imprint obtained from the Neopost dealer who serviced machine #4181751, also showed a clear and sharp date which was identical in sharpness and contrast to the ordinary-light appearance.

25. On Feb. 15, 2002, a written statement was received from John Osborne, U.S. Postal Inspection Service, that in regard to plaintiff's complaint of mail theft, the U.S. Attorney's Office has guidelines which refer to local authorities the prosecution of cases with an amount of loss less than \$10,000.

26. On Mar. 1, 2002 an affidavit by Robert Jaegly was notarized stating that the envelope he received on November 14, 2001 was a written instrument issued by the City Court of Albany, a governmental instrumentality; that he discovered it had been stolen and falsely altered; that the alteration deceived him, and disadvantaged him, and advantaged Philip Zeller; and that Philip Zeller had the skill, means and opportunity to alter this envelope.

27. On Mar. 7, 2002, Kimberly Mariani of the Albany County District Attorney's Office stated in connection with the affidavits alleging forgery dated Dec. 17 and Mar. 1, that a requirement for her office to approve cross-complaints was untrue and that complaints should be filed with the police department.

28. On Mar. 7, 8, and 11, attempts were made to file charges of forgery at North Station with supervising sergeant and lieutenant. Sergeant Canfora refused to believe the policy stated by Ms. Mariani and refused to take any complaint. On Mar.

17, Lieutenant Congenni refused to look at any evidence and stated that he would only take complaints from the Department of Social Services or the City Court.

29. On Mar. 18, 2002, the U.S. Attorney's office was given the affidavit of Mar. 1 alleging theft of mail and forgery and copies of the described photographs, along with Mr. Norton's affidavit of Dec. 10 and the Feb. 15 statement from John Osborne. On Mar. 20 Assistant U.S. Attorney Spina told plaintiff that the written statement from Mr. Osborne was more than is usually given, that the affidavits were adequate and any additional facts were the duty of detectives, and that the refusal of Albany police to take a complaint was unusual and very curious.

30. On Mar. 26, 2002, the Albany Police Department Detective Bureau told plaintiff that Detective Santandria handles forgeries, and complaints should be filed at South Station. On the same date, Officer D. Walker and her sergeant refused to take a complaint alleging forgery and advised that Detective Santandria would have to approve; when he returned he looked only at altered envelope, refused to look at affidavits, and stated that US Attorney Spina was not qualified to refer matter to him and that he would only investigate if a written statement was obtained from a postal inspector saying that the envelope had been altered.

31. Later on Mar. 26, Postal Inspector Osborne stated he could not personally look at envelope and any written statement would have to come from the FBI Laboratory after opening a case, which the guidelines precluded, and there was no evidence the Postal Service was defrauded by this case.

32. On Aug. 29, 2002, a trial was held on the charges of Criminal Contempt Second Degree and Harassment Second Degree. All charges were dismissed on the evidence before any defense was presented.

33. On Sep. 23, 2002, a Freedom of Information request was filed with the Albany City Clerk requesting copies or inspection of 7 items relating to the events on Dec. 5, 2001, the documentation of software used to produce reports previously furnished, and the Standard Operation Procedures for the police department, except for those parts which may be withheld under section 87 or 89 of the New York Freedom of Information Law.

34. On Feb. 28, 2003, a letter was received from Joseph Rabito, City Clerk and Records Access Officer, answering the requests for 4 of the items and granting access for inspection "through the Administrative Services Bureau of the Albany Police Department" for item #3, a duty roster of officers, item #6, the software documentation, and item #7, the Standard Operating Procedures.

35. On May 6, 2003, the plaintiff went to the Albany Police Department offices on Henry Johnson Blvd. following instructions received the previous week from a person who answered a telephone call directed to the Administrative Services Bureau. There, he presented the letter from Mr. Rabito as instructed. The clerk summoned Commander Breen, who recognized plaintiff, and after glancing at the letter of requests which had been granted by Mr. Rabito, stated that she was denying access because item #6 did not exist and the request for item #7 was "overly broad". She did not give a reason for denying access to the duty roster. The plaintiff requested that she put the denials in writing but she refused to write anything.

36. On July 2, 2003 Lieutenant Flanger of the Albany Police Department told plaintiff that the Rules and Regulations of the department are incorporated into the Standard Operating Procedures, that the Standard Operating Procedures do not contain any confidential data and is available to the public, but that he would not have told me that if he had known that I had been in contact with Commander Breen and been given contradictory information.

37. On July 8, 2003, a letter was received from Robert Freeman, executive director of the New York Department of State Committee On Open Government giving an official opinion on the FOIL request of Sep. 23 and the entire correspondence between Robert Jaegly

and the City of Albany concerning that request. He stated that some aspects of the Standard Operating Procedures must be disclosed while others may be withheld, such as non-routine investigative procedures, and that an agency is required to make a review to determine which portions may be withheld.

38. Article 89.3 of the New York Public Officer's Law states that a denial of a FOIL request must be in writing. Article 89.8 states that any person who with intent to prevent the public inspection of a record willfully conceals any such record is guilty of a violation.

39. On Aug. 13, 2003, in response to a question about which detective replaced the retired Detective Santandria and could review his failure to take a forgery complaint, Detective Sergeant Kevin Breen stated that [the evidence of theft and forgery of the summons issued in the case which had been dismissed] was "not a police matter", and that he would "have you arrested" if he was spoken to again.

40. On Mar. 5, 2002 a Notice Of Claim was filed with the City of Albany for False Arrest, Battery, Criminal Tampering, and Failure to Follow Lawful Orders & Regulations; on Nov. 21, 2002 a Notice Of Claim was filed for Malicious Prosecution and Violation of Civil Rights; on Aug. 1, 2003 a Notice Of Claim was filed for Negligent Administration.

**IV. First Cause of Action for Malicious Prosecution Under New York Law**

41. Matthew Couch was the complainant in a prosecution that was terminated in the defendant's favor. There was no probable cause for a belief in the defendant's guilt, as evidenced by false statements made on the original complaint, no evidence given for all of the elements of the crime charged on the replacing information, and no evidence such that a person of ordinary prudence could have believed that there was not a lawful reason for plaintiff's behavior or that plaintiff had any intention to violate an order of protection. Mr. Couch acted with malice in that he wilfully and after deliberation committed false arrest and he knew that the prosecution would not succeed. He had acted with probable cause so lacking as to permit inference that the arrest was maliciously instituted.

**V. Second Cause of Action for False Arrest Under Federal Law**

42. Matthew Couch arrested the plaintiff in the present case, intending to, and making him "spend the night in jail", of which the plaintiff was aware of and did not consent, and for which there was no lawful reason. He acted with malice in that he knew there was no basis in the available evidence for a felony charge, and he knew or should have known that statements he was given were motivated by malice.

**VI. Third Cause of Action for Malicious Prosecution Under Federal Law**

43. Liability for malicious prosecution under New York law gives rise to liability by civil action for deprivation of rights under United States Code Volume 42 Section 1983.

44. Additionally, the order of protection referred to in this case was the result of a malicious prosecution for harassment, the purpose of which was to restrain the liberty of plaintiff, not in jail, but in a locality in the jurisdiction of a local court which he would otherwise not be subject to the jurisdiction of. This purpose was accomplished and continued by the subject prosecution for Criminal Contempt, and numerous appearances required over the course of nine months kept plaintiff from business in other states.

45. Another deprivation of constitutional magnitude occurred when, unknown at first to plaintiff, he was originally brought under the jurisdiction of City Court by manipulation of the process of that Court in violation of his rights under the Constitution. Incontrovertible physical evidence was obtained that showed that the date on the envelope sent from City Court had been falsely altered; there was no reason to believe that the alteration was or could have been done by the Postal Service or City Court, and thus it was likely done by theft of the summons



from plaintiff's mailbox, and likely for the reason of covering up the fact that the envelope had been stolen and kept for a period of time. Not having the date, by itself, took away plaintiff's right to contest the validity of a summons which had not been mailed according to law and hence was void, and plaintiff suffered other disadvantages due to being deprived of fair and proper notice of the charge against him.

46. Plaintiff was frustrated in bringing this fraud to the attention of a Court, as physical proof was not accepted, only a complaint filed with Albany police officers, who refused to allow a complaint to be made, as detailed above. Since only the fraud itself, and not the perpetrator, need have been proven to a court for the court to find that the subject prosecution was tainted, if either Lieutenant Congenni or Detective Santandria had performed their ministerial duty to simply take a complaint, plaintiff would have had the malicious prosecution terminated and been spared thousands of dollars in damages that later accrued.

**VII. Fourth Cause of Action for Failure to Perform Ministerial Duties Resulting in a Violation to the Right to Due Process and Equal Protection**

47. Although there is no right to "police protection" or any other governmental function that is discretionary and a duty only to the public at large, the act of simply taking a report is

ministerial and non-discretionary. Article 12.2.60 of the Rules and Regulations of the Albany Police Department in effect in 1987, and other rules and regulations, require that any information of a police nature be reported, and officers have been found in violation of that article for not taking a report from a citizen. Taking a report is ministerial according to the reasoning of Tango v. Tulevech, 471 NYS2d 73, because the content is provided by the citizen and results in substantially the same complaint regardless of the minister.

48. When an action is exclusively ministerial, a municipal officer will be liable if the act is tortious and not justifiable according to statutory command. The regulations of the police department establish a duty towards persons reporting crimes. In addition, a special duty exists towards persons already being prosecuted, to act on complaints of fraud in their prosecution, because due to the existing conduct of the department, inaction would result in active injury instead of a lack of benefit. "If conduct has gone forward to such a stage that inaction would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward." [Bolen, Studies in the Law of Torts, quoted in H. R. Moch Co. v. Rennsselaer Water Co., 247 NY 160, and Schuster v. City of New York, 180 NYS2d 265]

49. In the case at hand, the very fact that complaints were not taken in a routine and perfunctory way (and then ignored) acknowledged that a special relationship existed. A motive may be offered for such conduct in that there might be perceived to be less risk of department discipline for avoiding a report than for neglecting to properly act on one that had been taken. In any case, injury by way of legal expenses, etc, to the victim of a fraud via court process was foreseeable.

50. When Detective Santandria refused to accept the authority of the US Attorney's office with regard to a postal matter and insisted on an action by a postal inspector for which the postal inspector had no inclination nor actual jurisdiction, and knowing that the matter concerned fraud on the process of a court which was prosecuting the complainant, he acted under color of law to interfere with the complainant's right to equal protection under the .

**VIII. Fifth Cause of Action For Violation of New York Public Officer's Law and Plaintiff's Civil Rights**

51. Commander Paula Breen deliberately disregarded the lawful order of the City of Albany Records Access Officer to make available for inspection the Standard Operating Procedures manual of the Albany Police Department and other records which were lawfully requested under the New York Freedom of Information Law.

52. Even if, through mistake, there were some parts of that manual that were withholdable by law and which should not have been ordered to be made available by the Records Access Officer, most parts of the manual (according to her subordinate), and many of those parts requested by the plaintiff in this action, (such as those parts of the manual giving the duties of various officers), are not withholdable and there was no lawful reason not to make as many parts of the manual as could be instantly determined to be disclosable available on May 6, 2003.

53. The act of making the records specified by the Records Access Officer available for inspection, unlike the act of advising the Records Access Officer which records to make available, is a ministerial function. Commander Breen recognized the plaintiff when he appeared to inspect records, and was aware, as a high-ranking department head, of plaintiff's Notice of Claim mentioning "regulations" about which the Chief of Police had been informed. Since Commander Breen, as a subordinate, had been ordered by the Records Access Officer to make records available to plaintiff, concealing them from plaintiff with the intent to prevent their inspection was a criminal act in violation of article 89.8. The breach of ministerial duty to make them available was thus retaliatory and criminal and intended to interfere with plaintiff's constitutional rights.

**IX. Sixth Cause of Action for Maintaining Harmful Policies and Procedures**

54. By the proof of the above causes of action, and by other acts committed as alleged by police officers Nadoraski, Canfora, Congenni, Walker, and Kevin Breen, the City of Albany is shown to have policy and procedures which cause the deprivation of rights, privileges, and immunities secured by the Constitution and Laws of the United States.

**X. Demand for Jury Trial**

55. Plaintiff demands a trial by jury.

**XI. Prayer For Relief**

56. Plaintiff demands judgement against the defendants as follows:

**First cause of action:**

Compensatory damages in the sum of \$150,000.

Punitive damages in the sum of \$150.000.

An award of costs and attorney's fees.

**Second cause of action:**

Compensatory damages in the sum of \$150,000.

Punitive damages in the sum of \$150.000.

An award of costs and attorney's fees.

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**Third cause of action:**

Compensatory damages in the sum of \$150,000.

Punitive damages in the sum of \$150.000.

An award of costs and attorney's fees.

**Fourth cause of action:**

Compensatory damages in the sum of \$50,000.

Punitive damages in the sum of \$50.000.

An award of costs and attorney's fees.

**Fifth cause of action:**

Compensatory damages in the sum of \$50,000.

Punitive damages in the sum of \$50.000.

An award of costs and attorney's fees.

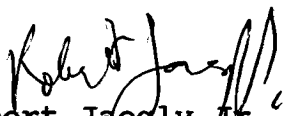
**Sixth cause of action:**

Compensatory damages in the sum of \$500,000.

Punitive damages in the sum of \$500.000.

An award of costs and attorney's fees.

Respectfully submitted,

  
Robert Jaegly Jr.  
Plaintiff pro se  
Box 44004  
Fort Washington MD 20749

August 29, 2003